IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH PAUSHA 1928

Crl.MC.No. 3549 of 2003(C)

CC.166/2002 of JUDL.MAGISTRATE OF FIRST CLASS, MANANTHAVADY

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PETITIONER: ACCUSED

BR.SUPERIOR JOSEPH MATHEW,
MANAGER, NIRMALAGIRI ESTATE, MATTILAYAM P.O.,
THONDERNAD, NORTH WAYANAD.

BY ADV. SRI.M.C.JOHN

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. ADV.SUSHEELA R BHATT,SPL.GP FOR FORESTS

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 10/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J

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CRL. M.C. NO. 3549 OF 2003

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Dated this the 10th day of January 2007

O R D E R

The petitioner, who is the accused in O.R. No. 9/1999 of Makiyad Forest Station/C.C. 166/2002 of JFCM. Mananthavady implicating with respect to the offence under section 4(4) of the Kerala Preservation of Trees Act on the allegation that he cut two sedar trees, has sought for setting aside the proceedings. It is pointed out that the trees allegedly cut were standing in the Nirmalagiri Estate comprised in R.S.No. 1106 of Thondernadu village owned by the Carmalite Society known as 'Aranyasramam' which is a charitable organisation. It is pointed out that the area is a coffee estate and hence section 5 of the K.P.T Act will not be attracted. It is further pointed out that the petitioner is the Manager of the Monastery and he is a person leading a monastery life and that he is being harassed by initiating the above proceedings. It is further pointed out that the particular tree which is described as red sadar in the charge sheet is not

covered by the particular statute vide section 2(e) of the definition of tree which covered only certain items of trees and not red sadar. The respondent has filed a counter pointing out that the particular area is covered by the notification issued under section 5(1) of the K.P.T.A Ordinance and has produced the copy of the same and that the area is covered by item No.48 therein which included Survey No. 1106. It is also contended that Chuvannakil is a local name of Chandana vempu (Cedrela toona) covered by section 2(e).

2. I find that the very case in the charge is that particular trees, which were cut without permission, were standing in the area cultivated with coffee and tea. As per section 5(1) the notified area as contemplated are areas covered by the private forest or Cardamom Hills Reserve or other areas cultivated by cardamom. Evidently, the provision does not contemplate coffee or tea estates. Hence the charge that the petitioner cut two trees from the coffee estate and thus violated s.4(4) of the Act cannot be sustained. I find that there is no reason for the authority to mention a different name to the tree then that is specified in the statute. In the circumstance, explanation in this regard cannot

be accepted. In view of the above factors brought out I find that the proceedings initiated against the petitioner is liable to be set aside and I do so.

3. In the result the Crl. M.C is allowed. The proceedings in C.C. 166/2002 in the court of JFCM, Mananthavady is herewith quashed.

The Crl. M.C. is disposed of accordingly.

K.R. UDAYABHANU, JUDGE.

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